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15  
16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 ALAN HERNANDEZ; individually,  
19 and on behalf of other members of the  
general public similarly situated,

Case No.: 2:12-CV-05543-DSF-JC  
Honorable Dale S. Fischer  
Courtroom 840

20 Plaintiffs,

PLAINTIFF ALAN HERNANDEZ'

21 vs.

RESPONSE TO ORDER TO SHOW

22 CHIPOTLE MEXICAN GRILL,  
23 INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

CAUSE RE ADEQUACY OF

24 Defendants.

COUNSEL

25 Complaint Filed: June 26, 2012

26 Trial Date: None Set

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. INTRODUCTION**

3                   Plaintiff Alan Hernandez (“Plaintiff”) submits this Response to the Court’s  
4 August 23, 2012 Order to Show Cause regarding the adequacy of Plaintiff’s  
5 counsel to serve as class counsel in the event a class is certified in this action.  
6 Plaintiff’s counsel, Girardi & Keese and Lawyers for Justice, PC, have extensive  
7 experience litigating class action lawsuits and have the resources to prosecute this  
8 action. To date, counsel has already dedicated a substantial number of hours to  
9 investigating and researching the facts and circumstances giving rise to the claims  
10 presented in the operative Complaint. As explained in detail below, Plaintiff’s  
11 counsel is more than adequate to serve as class counsel in the event this case is  
12 certified as a class action.

13                   **II. THE STANDARD FOR DETERMINING ADEQUACY OF CLASS  
14 COUNSEL**

15                   Rule 23(g) of the Federal Rules of Civil Procedure sets forth the factors  
16 that courts must consider when determining whether a plaintiff’s attorneys are  
17 qualified to serve as class counsel. The court must consider: (i) the work counsel  
18 has done in identifying or investigating potential claims in the action; (ii)  
19 counsel’s experience in handling class actions, other complex litigation, and the  
20 types of claims asserted in the action; (iii) counsel’s knowledge of applicable law;  
21 and (iv) the resources that counsel will commit to representing the class. Fed. R.  
22 Civ. P. 23(g)(1)(A)(i-iv). In addition, the court may consider any other matter  
23 pertinent to counsel’s ability to fairly and adequately represent the interests of the  
24 class. Fed R. Civ. P. 23(g)(1)(B).

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1                   **III. PLAINTIFF'S COUNSEL ARE ADEQUATE TO SERVE AS CLASS  
2                   COUNSEL**

3                   **a. Counsel Has Expended Considerable Efforts Researching and  
4                   Investigating the Class Claims**

5                   Despite the early stage of this litigation, Plaintiffs' counsel has already  
6                   dedicated considerable efforts to investigating the class claims. To date, Plaintiff's  
7                   counsel's investigation and research has included: 1) extensively interviewing  
8                   Plaintiff; 2) communicating with other potential plaintiffs and/or other percipient  
9                   witnesses; 3) reviewing and analyzing in-store display and in-store paper menus; 4)  
10                  reviewing and analyzing post-lawsuit filing changes to the in-store display menus;  
11                  5) reviewing and analyzing Defendant Chipotle Mexican Grill, Inc.'s  
12                  ("Defendant") in-store advertising materials (also known as "passionate  
13                  ramblings"); 6) reviewing and analyzing the representations (on-line, print, video,  
14                  and audio) of Defendant's officers, employees, and agents relating to "naturally  
15                  raised" claims; 7) reviewing and analyzing Defendant's annual reports and other  
16                  required corporate filings; 8) reviewing and analyzing external business and  
17                  financial reports relating to Defendant's business practices, procedures, and  
18                  policies; 9) reviewing and analyzing press releases distributed by Defendant  
19                  relating to "naturally raised" claims and other closely related topics; 10)  
20                  reviewing, analyzing, and monitoring the contents of Defendant's website and  
21                  post-lawsuit filing changes thereto; 11) reviewing and analyzing on-line consumer  
22                  statements regarding Defendant's "naturally raised" claims; 12) reviewing and  
23                  analyzing media articles regarding Defendant's "naturally raised" claims;  
24                  13) reviewing, analyzing, and monitoring other websites such as  
25                  chipotlesucks.com and chipotlefan.com for information relating to Defendant's  
26                  "naturally raised" claims; 14) reviewing and analyzing the Honorable  
27                  Congresswoman Louise M. Slaughter's February 16, 2012 inquiry to Defendant  
28                  and other similar establishments; 15) reviewing and analyzing Defendant's and  
                     other similar establishments' responses to the Hon. Congresswoman Louise M.

1 Slaughter's February 16, 2012 inquiry; 16) reviewing and analyzing "What's in the  
 2 Beef?" survey results; 17) reviewing and analyzing United State National Residue  
 3 Program for Meat, Poultry, and Egg Products 2010 Residue Sample Results;  
 4 18) researching and analyzing Defendant's business practices, policies and  
 5 procedures; 19) researching Defendant's supply chain; 20) researching  
 6 Defendant's business, operational, and financial relations to McDonalds  
 7 Corporation; 21) researching other class actions involving similar claims;  
 8 22) reaching and analyzing USDA Standards relating to "naturally raised" claims;  
 9 23) reviewing and analyzing the menus and advertisements/commercials of  
 10 Defendant's competitors; 24) researching experts who may be helpful in this  
 11 action; 25) reviewing and analyzing the background, formation, and presentation  
 12 of Defendant's "Back to the Start" advertisement; 26) reviewing and analyzing the  
 13 media coverage of this action and other actions against Defendant; 27) reviewing,  
 14 analyzing and monitoring legal blogs regarding consumer class actions, false  
 15 advertising and unfair business practices; 28) researching the work product of the  
 16 public relations firm hired by Defendant to advance Defendant's "Food With  
 17 Integrity" campaign; 29); researching federal and state updates to class action,  
 18 false advertising, and unfair business practices law, and 30) reviewing and  
 19 analyzing the National Advertising Division of the Council of Better Business  
 20 Bureaus, Inc.'s case report relating to Defendant's "Back to the Start"  
 advertisement.

21 Additionally, Plaintiff's counsel anticipates that investigation of the class'  
 22 claims will entail massive formal pre-certification discovery and post-  
 23 certification discovery. Plaintiff's counsel is prepared to commence discovery as  
 24 soon as Defendant's counsel agrees to participate in the parties' Rule 26(f)  
 25 conference. Plaintiff's counsel anticipates taking no fewer than fifteen (15)<sup>1</sup>

26 <sup>1</sup> Plaintiff may seek to expand the number of depositions in this case further. If  
 27 Defendants designate numerous individuals as Persons Most Knowledgeable regarding  
 28 the topics to be noticed, the number of individuals Plaintiff seeks to depose may exceed  
 twenty. Similarly, if Defendants produce declarants in support of their Opposition to  
 Plaintiff's Motion for Class Certification, Plaintiff will need to depose these witnesses.

1 depositions in this matter.

2 As this is a purported nationwide class action Plaintiff will also be serving  
3 extensive discovery, including requests for admission, requests for production of  
4 documents, and specially prepared interrogatories. Plaintiff anticipates that  
5 Defendant Chipotle Mexican Grill, Inc. (“Defendant” or “Chipotle”) will produce  
6 over one hundred thousand documents in response to these discovery requests,  
7 which will take considerable time to review, and which will likely lead to more  
8 narrowly tailored discovery requests.

9 In addition to this extensive investigation of the class members’ claims and  
10 Defendants’ practices, Plaintiff’s counsel has also engaged in motion practice.  
11 Plaintiff responded to this Court’s first Order to Show Cause why this case should  
12 not be dismissed for lack of subject matter jurisdiction. Plaintiff’s counsel devoted  
13 several hours to responding to this Order to Show Cause, which the Court  
14 discharged on August 20, 2012. (Docket No. 15). Plaintiff’s counsel has spent  
15 several hours responding to the instant Order to Show Cause regarding counsel’s  
16 adequacy. Additionally, Plaintiff’s counsel also opposed Defendant’s motion to  
17 dismiss and motion to strike portions of Plaintiff’s complaint.

18 **b. Counsel Has Years of Experience Litigating Class Action  
19 Lawsuits and Has Extensive Knowledge of the Laws Applicable  
20 to this Case**

21 **i. Girardi & Keese**

22 Girardi & Keese is a firm with approximately thirty attorneys who  
23 specialize in the representation of plaintiffs in mass torts and complex litigation,  
24 class actions, and individual claims. (Declaration of John A. Girardi [“Girardi  
25 Decl.”], ¶ 1.) Girardi & Keese has been in existence for more than thirty years,  
26 and has ten members who are also members of the American Board of Trial  
27 Advocates. (*Id.*) Girardi & Keese has served as lead, liaison and executive  
28 committee counsel on numerous local and national multi-plaintiff pharmaceutical,

1 business, antitrust, and product defect cases. (*Id.* at ¶ 4.) Girardi & Keese is  
 2 highly regarded as one of the most reputable, successful, resourceful, and talented  
 3 plaintiff's class action law firms in the State of California. (Declaration of Edwin  
 4 Aiwazian ["Aiwazian Decl."] ¶ 8.)

5                   **ii. Lawyers for Justice, PC**

6                   Lawyers for Justice, PC predominantly focuses on the prosecution of  
 7 consumer and employment class actions involving wage-and-hour claims, race,  
 8 discrimination, unfair business practices, and false advertising. Lawyers for  
 9 Justice, PC has successfully negotiated several key settlements on behalf of  
 10 thousands of aggrieved California employees. (*See generally* Aiwazian Decl.)

11                  Lawyers for Justice, PC has litigated several actions involving fraudulent  
 12 and/or misleading in-store representations on behalf of California consumers. For  
 13 example, Lawyers for Justice, PC, in association with other co-counsel,  
 14 represented the plaintiff in a case entitled *Jason Kaya, et al. vs. Whole Foods*  
*Market California, Inc., et al.*, Los Angeles Superior Court Case Number  
 15 BC421926, which was a consumer class action involving false advertising of  
 16 volume discounts. On December 14, 2011, the Court granted final approval of the  
 17 class action settlement. (Aiwazian Decl., ¶ 11.) Additionally, Lawyers for Justice,  
 18 PC, again in association with other co-counsel, represents the plaintiff in a case  
 19 entitled *Shenkman vs. One World Enterprises, LLC d/b/a O.N.E., et al.*, Los  
 20 Angeles Superior Court Case Number BC467165, which is a consumer class action  
 21 involving false advertising of nutritional information relating to coconut water.  
 22 (*Id.*)

23                  As evidenced by Girardi & Keese and Lawyers for Justice, PC's  
 24 considerable experience in prosecuting class actions and consumer fraud actions,  
 25 Plaintiff's counsel is extremely knowledgeable regarding the relevant laws at  
 26 issue in this case.

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1                   **c. Counsel Has Devoted and Will Continue to Devote Considerable**  
 2                   **Resources to this Action**

3                   Plaintiff is represented by five lawyers from two different firms who are  
 4 prepared to devote all necessary resources to the prosecution of this action.  
 5 (Aiwazian Decl., ¶ 4; Girardi Decl, ¶ 5.) These resources include advancing the  
 6 costs and expenses needed to litigate this action and devoting considerable time  
 7 to investigating and litigating Plaintiff's class claims. (Aiwazian Decl., ¶ 3-5;  
 8 Giradi Decl, ¶ 5.) Plaintiffs' counsel has already devoted numerous hours to the  
 9 prosecution of this action. (Aiwazian Decl., ¶ 3-4.) Plaintiff's counsel stands  
 10 ready to devote the additional time and expense needed to litigate this case.  
 11 (Aiwazian Decl., ¶ 4-5; Giradi Decl, ¶ 5.)

12                  **IV. PLAINTIFF'S RETAINER AGREEMENT, CO-COUNSEL'S FEE-**  
 13                  **SHARING AGREEMENT, AND PLAINTIFF'S CONSENT TO CO-**  
 14                  **COUNSEL'S FEE SHARING AGREEMENT HAVE BEEN**  
 15                  **SUBMITTED TO THE COURT FOR IN CAMERA REVIEW**

16                  Pursuant to the Court's Order to Show Cause, Plaintiff has submitted his  
 17 retainer agreement with Plaintiff's counsel for in camera review by the Court.  
 18 Additionally, Plaintiff has submitted the fee-sharing agreement between Girardi  
 19 & Keese and Lawyers *for Justice, PC*, and Plaintiff's consent to the fee-sharing  
 20 agreement between Girardi & Keese and Lawyers *for Justice, PC* for in camera  
 21 review.

22                  **V. COUNSEL'S PROPOSAL FOR ATTORNEYS' FEES AND**  
 23                  **NONTAXABLE COSTS**

24                  In the event that Plaintiff prevails in this action and a class recovery is  
 25 obtained, Counsel for Plaintiff anticipates petitioning this Court for an award of  
 26 attorneys' fees calculated based on Counsel for Plaintiff's lodestar and a  
 27 reasonable multiplier to the extent warranted. However, if there is no injunctive  
 28 or monetary recovery for the class, Counsel for Plaintiff's attorneys' fees will not

1 exceed thirty-five (35) percent of the recovery for the individual Plaintiff.  
2 Plaintiff's counsel's fee-sharing agreement has been submitted to the Court for in  
3 camera review. Counsel will also petition the court for reimbursement of all  
4 necessary and reasonable actual costs/expenses advanced in the course of this  
5 litigation.

6 **VI. CONCLUSION**

7 We thank the Honorable Court in inviting us to present the above  
8 information. We stand ready to respond to any further inquiries regarding our  
9 adequacy to serve as class counsel.

10 Dated: September 12, 2012

**LAWYERS for JUSTICE, PC**

11  
12 By:   
13 Edwin Aiwazian  
14 Attorneys for Plaintiff

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